



Position Statement Against HB 4463-4464

March 20, 2007

House Tourism, Outdoor Recreation and Natural Resources Committee

The Michigan Lake Property Owners Association (MLPOA) is statewide association that represents Michigan's riparian property owners and lake associations. The MLPOA believes in the equal, open, and unrestricted public access to the waters of our state. **The MLPOA opposes HB 4463 and HB 4464 as it would provide private taking of public property, inhibit public access to Michigan lakes, reverse existing case law, and continue neighbor to neighbor lawsuits over road ends.**

Present existing appellate and Supreme court case law provides for open and unrestricted access to the waters of the state via roads ending at the edge of navigable waterways to the public. That same case law prohibits, *without exception*, private individuals from confiscating these public roads and converting them to private marinas. Essentially, HB 4463 and HB 4464 would reverse existing case law and allow for private access rights on public access property. This legislation will change over 124 years of case law and grant through a rental process of local township/municipalities lake access rights by selected public member on public access road ends.

Road ends are, at the most, 66 wide (the dedicated road width), and in most cases the road end is 35 to 40 feet wide. To erect an exclusive dock and allow boat lifts on public access property, as stipulated in the bill, will take a majority of the width of that road end, thereby limiting for the public to have ingress or egress. The net result is control of that road end by non property owners. Also, the legislation allows the length of the dock to be up to 250 feet. This would on some lakes, a navigation hazard if the average dock is 100 feet in length and the water depth is not gradual, thereby extending out further than surrounding docks.

The legislation further makes the assumption that the local unit of government has ownership or a deed restriction for that road end. In almost all cases, the road end deed restriction is in control of the local road commission when the platting of the lake area was done. The local governing unit must obtain from the road commission a transfer of that restriction and liability for the road end before obtaining a permit under the proposed legislation. Further the original deeds that granted the restriction over the road end as a public access point restricts public access to ingress and egress only. The Michigan Legislature cannot change the deed dedication as such an action may only be done by a change in the state constitution. Changes to deed dedication may only be done by the owner of the property. In cases of road ends, the property owners would be the two adjoining riparian owners, not the local unit of government that only has a deed restriction right.

The legislation proposes that the Department of Natural Resources shall issue a permit to establish a marina at a road end upon meeting of certain conditions. Under DNR 281.819, rule 9, the Department has set criteria before a marina permit is issued in order to protect not only the public but the surrounding property owners. The DNR rules protect such important issues as proper zoning; unreasonable affect on the public trust or riparian interest; ingress and egress effects; congestion and safety; adverse impairment of the waters or natural resources; parking area; adverse environmental effects.

HB 4464 also places any burden of proof that the local unit of government has the authority to provide exclusive marina facilities at a road end on those that do not wish to have that marina. Under present law, it is the local unit of government that must provide the proof that they have, through a deed restriction, the right to establish same. ***The real question to this legislation is who being served with this proposed legislation: the public or a small group of individuals that want to commandeer public property for their own private use?***

The MLPOA, instead, suggests legislative language that codifies 124 years of existing and consistent appellate case law. In other words, the legislation should provide for equal, open, unrestricted public access to the waters of the state via road ends for ***all*** people. Further, the legislation should prohibit private individuals from confiscating public road ends, converting road ends into their own private uses, and inhibiting ingress and egress for others to lakes and streams via road ends.

Therefore, Michigan Lake Property Owners Association urges that the committee to defeat HB 4463-4464 as it would provide private taking of public property, inhibit access to Michigan lakes, reverse existing case law, and continue neighbor to neighbor lawsuits over road ends.

Respectfully,

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President

Road End/Lake Access Issue Background

In 1882, Michigan's Supreme Court applied the doctrine of public trust to riparian interests associated with roads that terminate at a water body. The court ruled: 1) The scope of dedication determines the use of ways platted to terminate at a water body; 2) It is presumed the intent of dedicating a way platted to terminate at a water body is to provide public access; 3) A municipality may not appropriate the end of the street to private uses or any uses inconsistent with the dedication. (*Backus v. Detroit*, 49 Mich. 110, (1882) at p. 115 and 119-200).

Three more recent courts of appeal decisions scrupulously affirmed the *Backus* court ruling: *Thorn v. Rasmussen*, 136 Mich. App. 608 (1984); *Thies v. Howland*, 424 Mich. 282 (1985) and *Jacobs v. Lyon Township* (Higgins Lake), 199 Mich. App. 667 (1994). (The Supreme Court denied leave to appeal and reconsideration of the *Jacobs* case.) In the 1993 *Jacobs* Court of Appeals decision, it was ruled that those sections of Lyons Township road end ordinance permitting boat hoists, lounging, picnicking and sunbathing exceeded the scope of the dedication of the road end use.

The judicial interpretation of Michigan's plat act as those acts apply to roads terminating at a water body, clearly place road ends and their riparian interests in the public trust; and that is the public policy of this state today.

Further, land dedicated to the public for roads under the Subdivision Control Act, it is statutorily placed in trust to the municipality or local unit of government (predominately to local road commissions) for the use and purpose designated in the plat and for no other use or purpose. This land upon abandonment reverts back to the adjoining property owners. (*Kalkaska v. Shell Oil Co.* 157 Michigan App. 227 (1986) at page 231, and the Subdivision Control Act MCLA 560.101 et seq.).

In its opinion in January 2003, the Michigan Court of Appeals stated the public clearly has a right to have access to lakes at public road ends, and the access should be the guiding principle in resolving future disputes concerning use of the road ends. The decision went on to say that preservation of lake access at road ends for the public requires some limitation on the use of road ends. In other words, those that moor boats, build docks and erect boat hoists at road ends appropriate the road end for their own private use and impede public access.

On some lakes, road ends have become private marinas controlled by associations composed of off-lake property owners whose members appropriated public trust interests for private purposes such as seasonally mooring of their boats. Some associations even charged members for the privilege of seasonally mooring their water craft, and in one extreme case on a lake, an individual appropriated a road end and charged a relatively high fee for others to seasonally moor on his dock.